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Proposed Attorneys for Fairfax Hotel, LLC

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

FAIRFAX HOTEL, LLC,
a California Limited Liability Company

Debtor-in-Possession.

Case No.: 22-30593

Chapter 11

STATUS CONFERENCE REPORT

Date: April 13, 2023

Time: 10:00 a.m.

Via tele/video conference

Fairfax Hotel, LLC, Debtor-in-Possession herein (“Debtor”) submits this Status Conference Report:

1. The within case was commenced by filing a voluntary chapter 11 petition on October 31, 2022. The Debtor is in possession of the estate. The duly appointed Responsible Individual for the Debtor is Hitesh Patel.

2. Fairfax is owned by Hansaben Patel. She is the sole member of the Debtor and Hitesh Patel is the Debtor's President. He is Hansaben Patel's son. The family of Jashvant and Hansaben Patel own thirteen hotels in California. The history of the Patel family hotel business began in 1980 and over the years the family added multiple hotels and created different entities to

1 own them.

2 3. The Debtor owns real property located at 420 Eddy Street, San Francisco
3 California, which is commonly known as the Fairfax Hotel. The Fairfax Hotel is a residential
4 hotel consisting of 46 guestrooms, a resident manager's apartment, two offices, one kitchen, and
5 common areas including the basement and bathrooms. The Debtor does not operate the Fairfax
6 Hotel, rather the Fairfax Hotel has been leased to Swords to Plowshares, a California non-profit
7 corporation since 2014. Swords to Plowshares subleases guestrooms for affordable and
8 transitional housing for residential use on a month-to-month basis.

9 *Current status and next steps*

10 4. After receiving notice of only two months of missed loan payments, in March 24,
11 2022, DCR Mortgage 10 Sub 3, LLC ("DCR"), secured lender to the Debtor, accelerated the
12 maturity date of the loan and demanded payment in full. The proof of claim includes pre-petition
13 default interest, pre-payment penalties, other charges, and legal fees.

14 5. Debtor contends that under *Honchariw v. FJM Private Mortgage Fund, LLC, et al.*, 83 Cal. App. 5th 893 (2022), charging default interest assessed against the total amount of
15 unpaid principal balance of the loan and pre-payment penalties is an unlawful liquidated damages
16 provision in violation of public policy. Debtor and DCR have engaged in discussions on this
17 subject. Debtor and DCR have exchanged settlement terms and continue to do so.

18 *Unusual Developments that have occurred or are expected to occur*

19 6. The *Honchariw* decision altered the Debtor's approach. Debtor believes the issues
20 presented by the decision need to be resolved as the next step to move forward.

21 7. DCR has presented a proposal. The Debtor has been considering the proposal
22 to be in a position to make a counter-proposal. The Debtor expects to accelerate the process and
23 reach the outlines of a settlement proposal that will be a strong foundation for reaching a global
24 settlement with DCR and resolve the case issues. The Debtor expects to report to the Court with
25 a very short update prior to the April 13th Status Conference.

The business, financial, and other problems that prompted the filing of this case

8. In June 2014, Jashvant Patel and Hansaben Patel as landlords and owners of the Fairfax Hotel entered into a Lease Agreement for Fairfax Hotel with Swords to Plowshares as tenants (“Lease Agreement”). Per this Lease Agreement, Swords to Plowshares has the right and option to extend the initial one-year lease until 2029. Swords to Plowshares has occupied the Fairfax Hotel ever since the lease was entered into.

9. The Debtor was formed in December 2016 in connection with a loan obtained from Sterling Bank and Trust (“Sterling Bank”) in 2017. On or about January 31, 2017, Jashvant Patel and Hansaben Patel executed a grant deed granting the Fairfax Hotel to the Debtor.

10. On or about February 2, 2017, Sterling Bank and the Debtor entered into a Business Loan Agreement whereby the Debtor agreed to borrow, and Sterling Bank agreed to loan, \$3,550,000 to the Debtor. The Debtor and Sterling Bank executed a Promissory Note in the principal amount of \$3,550,000. The Debtor also executed a Deed of Trust and a Commercial Security Agreement.

11. Debtor understands that in February 2022, Sterling Bank sold and assigned its interest in the loan with the Debtor to DCR.

12. On March 9, 2022, the Debtor received a Payment Notice from DCR stating that the principal balance was \$3,260,467.95 and the Debtor was behind in two months payments of principal and interest. Shortly thereafter, on March 24, 2022, the Debtor received a letter from DCR’s counsel deeming the loan to be in default, accelerating the loan, and demanding payment in full. DCR subsequently noticed a foreclosure sale for November 1, 2022.

Issues concerning secured debt, employees, cash collateral, executory contracts.

13. Secured Debt. Aside from owing \$7,052 in real property taxes, the only other secured creditor is DCR. Per the Notice of Trustee's sale, DCR claims it is owed \$4,079,779.21. This claimed amount includes default interest, pre-payment penalties, late charges, and attorneys' fees. DCR filed a proof of claim in the amount of \$4,089,225.58. This claim includes default interest, pre-payment fees, unpaid late charges, and legal and foreclosure fees.

1 14. Lease Agreement. As the Lease Agreement was executed prior to the date that the
2 Debtor was formed, the Lease Agreement was originally only between Jashvant and Hansaben
3 Patel and Swords to Plowshares. When the Debtor was formed in conjunction with the loan from
4 Sterling Bank and the Fairfax Hotel real property was deeded to the Debtor, the Lease Agreement
5 was not amended to make the Debtor a party to the Lease Agreement. Jashvant Patel passed away
6 in 2019. Post-petition, Hansaben Patel assigned all of her interest in the Lease Agreement to the
7 Debtor so that the Debtor can receive rent from Swords to Plowshares and make payments on the
8 loan to DCR.

9 15. Per the terms of the Lease Agreement, the Debtor does not operate or manage the
10 Fairfax Hotel. Swords to Plowshares is responsible for all aspects of Fairfax Hotel's operations
11 and management. The tenant is also responsible for contracting for and paying for the services
12 necessary for its use of the premises, including utilities. The Debtor as landlord is only
13 responsible for "Major Systems" functioning, including but not limited to maintaining the
14 foundation, roof, structural walls, windows, exterior walls or surfaces, fire safety system,
15 electrical service, boiler, and main plumbing system. In practice, Major Systems repair or upkeep
16 is only required once a year. The Debtor is also responsible for maintaining real property taxes
17 and general liability insurance.

18 16. Cash Collateral. The Debtor's only source of income is the rent received. The
19 Debtor has received rent from Swords to Plowshares for the months of December 2023, January –
20 March 2023. Monthly rent is in the amount of \$28,980.92. Per agreement with DCR, the rent
21 received is being used to make monthly insurance payments, United States Trustee's quarterly
22 fees, and real property taxes that come due in April 2023. Since January 2023, the Debtor has
23 been paying \$18,523.48 per month to DCR, which amount represents principal and interest.

24 || 17. Employees. The Debtor does not have any employees.

25 | *Initial Debtor Interview and Meeting of Creditors*

26 18. The Initial Debtor Interview occurred on November 22, 2022. The Debtor
27 has provided all the information requested by the United States Trustee's office.

1 19. The 341 Meeting of Creditors took place on December 13, 2022, and was
2 concluded.

3 Insurance

4 20. The Debtor is insured under the following policies with the following limits:
5 Commercial general liability (\$1,000,000 per each occurrence; damages to rented premise
6 \$1,00,000; medical expenses \$5,000; personal injury \$1,000,000; general aggregate \$2,000,000;
7 products \$2,000,000); Property (building \$3,000,000; contents \$20,000; business income
8 \$240,000).

9 Post petition operations and revenue

10 21. The Debtor's source of income is rent from Swords to Plowshares. Swords to
11 Plowshares started paying rent in December 2022 and is required to going forward.

12 Status of any litigation

13 22. There is no pending litigation against the Debtor. The pending foreclosure by DCR
14 is stayed.

15 Monthly Operating Reports

16 23. The Debtor has filed October and November monthly operating reports and
17 anticipates filing the remaining required operating reports shortly and in advance of the status
18 conference.

19 Orders Entered Regarding Relief from Stay

20 24. No relief from automatic stay motions have been filed.

22 Dated: March 29, 2023

SULLIVAN BLACKBURN PRATT LLP

23 /s/ Christopher D. Sullivan
24 Christopher D. Sullivan
25 Proposed Attorneys for Debtor-in-Possession
26 Fairfax Hotel, LLC